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Dear Nikki

**SCOTLAND'S FIRST COASTAL AND MARINE NATIONAL PARK
LINK Consultation Response
January 2007**

This response is submitted on behalf of a number of members of the marine, landscape and planning task forces of Scottish Environment LINK. They are listed at the end of the response. LINK is the liaison body for Scotland's voluntary sector environmental organisations. Some of the organisations concerned are submitting individual responses too.

Introduction

Scottish Environment LINK members welcomed the Scottish Executive partnership commitment to establishing a Coastal and Marine National Park (CMNP) by 2008 and therefore welcome the current consultation.

Healthy seas are essential for a flourishing maritime economy as well as the conservation of our natural heritage. Yet the health of Scotland's seas is failing:

- 16 out of 21 Scottish fish stocks, including cod and Atlantic salmon, are beyond sustainable limits
- Important marine species and habitats, including common skate and seagrass beds, are in severe decline
- Seabird colonies are failing due to a shortage of food.
- More than 1.7 million farmed salmon have escaped into the wild from salmon farms in Scotland since 1998

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Current marine management is fragmented with no overall forward plan and no lead body to implement plans and deal with enforcement. Consequently, maritime development and activities have been based on exploitation rather than sustainability. Climate change will put further pressure on our marine species to adapt, so we need urgent reform of our current management system in order to safeguard our seas for future generations to use and enjoy.

As part of the solution, LINK members would therefore welcome a properly resourced CMNP with the appropriate tools, such as Marine Spatial Planning and Nationally Important Marine Area designations, to safeguard marine and coastal natural and cultural heritage features. The successful CMNP area would then be an excellent showcase of best practice, providing benefits for local communities and the environment such as:

- More money for rural areas, both directly from government and through product marketing, eg premiums for fishing produce and tourism opportunities
- A strong local voice in decision-making and a more 'joined-up' planning system through the National Park Plan
- Local responsibility and greater care for the special qualities of the area
- Greater care for special areas and conservation of coastal and marine natural and cultural heritage, including features of biodiversity and historic value
- More local, long-term employment

However, joined-up management, marine spatial planning, sustainable development benefits and adequate protection for coastal and marine natural and cultural heritage should not be the sole preserve of the successful CMNP area. As such, LINK members welcomed the proposed UK Marine Bill, which set out commitments to deliver many of the above. Since responsibility for most issues from the territorial baseline out to 12nm, including some such as fisheries, to 200nm, rests with the Scottish Executive, the proposed UK Bill will still, however, leave many gaps.

LINK members therefore believe that a Marine Act for Scotland is urgently needed to plug the gaps which a UK Bill would leave and to deliver the following for all Scotland's coasts and seas:

- A statutory system of Marine Spatial Planning in Scotland, fully integrated with other Marine Spatial Plans throughout the UK
- A lead Marine Management Organisation (MMO) to oversee marine spatial planning in Scottish waters, in co-ordination with a UK MMO, and measure success of Marine Spatial Plans against delivering an ecosystem approach through development and adoption of Marine Ecosystem Objectives
- Adequate protection for marine species, habitats and features of Scottish and international importance, including a network of Nationally Important Marine Areas

In summer 2006, LINK members responded positively to the UK Marine Bill consultation and now look forward to seeing a White Paper in Spring 2007. They also welcomed establishment

of and input to the Ministerial Advisory Group on the Marine and Coastal Strategy (AGMACS) and hope that legislative recommendations made by this group early in 2007 will include a commitment to a Marine Act for Scotland.

Chapter 1: The added value and benefits of a Coastal and Marine National Park

How could a Coastal and Marine National Park help communities develop in a more sustainable way and meet community aspirations?

It is the intrinsic natural heritage wealth of our coastal and marine environment that makes it so economically important. Over 80% of the value of Scotland's ecosystem services (the vital functions that support life on earth including flows of material and energy, nutrient cycling, food production etc.) derive from its territorial waters, at over £14 billion¹. Declines in the health of the environment, for example declines in fish stocks or coastal landscape quality, are directly correlated with loss of livelihoods.

A CMNP that includes a significant marine element and which, through Marine Spatial Planning, Nationally Important Marine Area designations and other means, properly protects the natural and cultural heritage upon which local communities ultimately depend, will therefore help support their livelihoods and meet their aspirations.

Indeed, we would stress that under the National Parks (Scotland) Act 2000, if '*in relation to any matter*' it appears to the National Park Authority that there is a conflict between the conservation and enhancement of the natural and cultural heritage and other National Park aims, then the Park Authority must give greater weight to '*conserve and enhance the natural and cultural heritage of the area*'.

A healthy and abundant marine environment that is allowed to replenish itself and is not irreversibly damaged or diminished by human activities is therefore a non-negotiable prerequisite for the following potential benefits of CMNP designation:

- Greater care for special areas and conservation of coastal and marine natural and cultural heritage, including features of biodiversity and historic value
- Enhanced local responsibility and greater care for the special qualities of the area
- A strong local voice in decision-making and a more 'joined-up' planning system through the National Park Plan
- New opportunities for research, education, training and communication to raise awareness, enjoyment and understanding among as wide an audience as possible of the importance of Scotland's coastal and marine natural and cultural heritage
- More local, long-term employment

¹ This compares with Scottish GDP of £64 billion in 1999. Williams et al, 2003, *Exploring the value of Scotland's environment*

- New opportunities to develop and share best practice in sustainable marine resource use, tourism, education and research
- More resources for rural areas both directly from government and indirectly through product marketing, e.g. through premiums for fishing produce from the CMNP and increased tourism opportunities (the existing National Parks have had over £30m of government investment since their inception)
- Improved infrastructure, developed sustainably
- Opportunities to develop new methods of delivering Sustainable Development in the marine and coastal environment

What problems could a Coastal and Marine National Park address?

We have treated the seas as a 'free-for-all' resulting in a 'tragedy of the commons'. There is currently no proper accountable forward planning system that enables us to protect the resources we rely on from irreversible damage. At sea there is increasing competition for space and resources; a lack of accountability due to obsolete legislation; undemocratic structures that exclude local communities and no proper protection for wildlife and marine resources.

A properly resourced CMNP could help address many of these issues within the CMNP area, provided the CMNP Authority had sufficient powers. With a robust National Park Plan and a strong National Park Authority, the CMNP would provide an excellent opportunity to deliver integrated marine management for one area of Scotland's coast and sea, taking on board the views of the local community. With statutory powers, a CMNP could add value to existing voluntary structures such as Area Management Agreements for aquaculture.

Throughout the rest of Scotland's coasts and seas, LINK members would welcome a Marine Act for Scotland to deliver integrated management by establishing:

- A statutory system of Marine Spatial Planning in Scotland, fully integrated with other Marine Spatial Plans throughout the UK
- A lead Marine Management Organisation (MMO) to oversee marine spatial planning in Scottish waters, in co-ordination with a UK MMO
- Adequate protection for marine species, habitats and features of Scottish and international importance, including a network of Nationally Important Marine Areas

Are there any other examples of benefits that a Park could bring?

A CMNP is also an excellent opportunity to:

- rationalise existing management and administrative functions for marine and coastal activities in the successful area

- showcase best practice in Marine Spatial Planning, community participation in plan-making, marine conservation and sustainable development for one area.

Chapter 2: Selecting the Location of Scotland's First Coastal and Marine National Park

Comments on whether the final selection should be based on these factors are invited, including how accessibility can best be considered.

Are there other factors that should also be considered when selecting the location? Consultees are invited to rank the proposed criteria in order of preference.

In selecting Scotland's first CMNP, LINK members recommend the following ranking of principles:

1. The Park area should be of outstanding national importance for natural heritage, or the combination of natural and cultural heritage;
2. Designating the area as a National Park would meet the special needs of the area and be the best means of ensuring that the National Park aims are collectively achieved in relation to the area in a co-ordinated way.
3. Designation of the area would make a significant contribution to the social and economic development of its communities;

Which area do you consider to be the strongest candidate as a Coastal and Marine National Park?

In particular do consultees agree that: The strongest all round case can be made for Argyll Islands and Coast area and Ardnamurchan, Small Isles and South Skye Coast area?

LINK members agree with the criteria and support the process by which Scottish Natural Heritage arrived at the shortlist of five candidate sites. As such, they also agree with the SNH conclusion that the strongest all round case can be made for both 'Argyll Islands and Coast area' and 'Ardnamurchan Small Isles and South Skye Coast area'.

However, such is the outstanding value of most of Scotland's coastline, that LINK members would not make a case for one over the other or for both combined. LINK members are more concerned about ensuring the CMNP Authority will have the powers and functions needed to carry out its purpose properly, including potential instances of conflict between the conservation and enhancement of the natural and cultural heritage and other National Park aims, and that it will have the powers necessary to give greater weight to '*conserve and enhance the natural and cultural heritage of the area*' (Sandford Principle).

Since LINK members would also like to see a Marine Act for Scotland empowering a Scottish Marine Management Organisation to implement a Marine Spatial Planning system

incorporating a designated network of Nationally Important Marine Areas throughout Scottish waters, the question of where the CMNP should be is secondary in this broader context.

However, LINK members would hope that this Coastal and Marine National Park will be the first, rather than the only, CMNP and that some other areas will be designated in future.

What criteria would you use to set the landward and seaward boundaries of the Park?

The choice of the landward boundary of the park is critically important in determining the benefits to local communities. In order for the maximum community benefit to accrue, it is important to ensure that the park boundary includes sufficient centres of population. The presumption should therefore be that all coastal communities should be included unless there was good reason to exclude them. This can be justified on the grounds that the influence of the coast on both the ecology and local economy extends far inland. In practice, the park should therefore include the whole of each island within it and mainland communities up to about 10km inland. There might be local arguments for extending further inland in some areas or excluding areas of an industrial nature or separated from the coast by a major watershed. The landward boundaries suggested by SNH do not, in general, extend far enough inland. The CMNP should have scope to extend its seaward boundary to 12 nautical miles.

Chapter 3: Functions, Powers and Governance

What functions and powers would you wish a Park to have?

In order to achieve the aims of a CMNP LINK members believe that the National Park Authority (NPA), must be given adequate powers through the National Parks (Scotland) Act to:

- Develop the National Park Plan into a working spatial planning system, based on sound information, for the whole Park. The Plan must be able, where necessary, to zone areas for appropriate activities (including management to limit damaging activities such as construction, anchorage, motorised watercraft and resource extraction), set threshold levels for activities and dovetail with Scotland-wide Marine Spatial Planning delivered by a Marine Act for Scotland.
- Take overall control of all existing and possible future devolved activities appropriate to the NPP in the CMNP. It must be able to resolve conflicts between sectors, encourage good practice through incentives and take and enforce decisions on day-to-day planning and management. It follows that the NPA must have nothing less than full planning powers in the terrestrial part of the Park, including designation as the Access Authority under the Land Reform Act, and that it should have overall responsibility for all appropriate activities taking place in the marine part of the Park²

² In addition to acting as Planning Authority, there are a range of functions we believe a NPA could deliver. These include Access Authority, planning authority for aquaculture, a role in advising any Inshore Fisheries Groups covering areas within the Park boundary, a role in enforcing the Nature Conservation Act and cetacean code of conduct.

- Reach agreement with UK departments on reserved issues, like defence or shipping routes.
- Take a strategic overview of the workings of the Park, be able to co-ordinate activity within the Park, and be flexible enough to adapt management to changing circumstances.
- Encourage active involvement of stakeholders, from UK and Scottish departments and non-departmental public bodies down to the grass-roots, through the publication of a strategy for involvement, appropriate powers, structures, and statutory measures³.

Do you consider that planning control for the land component should remain with the local authority or should it be transferred to the Park Authority?

The NPA must have nothing less than full planning powers in the terrestrial part of the Park, including designation as the Access Authority under the Land Reform Act.

Do you think that the potential for zoning to form an element of the development and implementation of the Plan is sufficient or should other site-based protection measures be considered?

Zoning will not be enough in itself. Proposals for the National Park Plan seem to rely largely on 'zoning' to protect wildlife, but it is not clear which law would implement this or enforce zoning. The only existing statutory protection is under limited legislative provision such as the Wildlife and Countryside Act (1981) and Marine Reserves. Both have been shown to fail to protect marine wildlife, so it is difficult to see how important areas for marine natural heritage would actually be protected using this legislation. Furthermore, LINK members would have concerns as to how the Biodiversity Duty under the Nature Conservation (Scotland) Act 2004 would be put into practice without being linked to the list of marine species and habitats of importance to Scotland.

In line with recommendations from the Review of Marine Nature Conservation, LINK is calling for Ministers to be able to designate Nationally Important Marine Areas throughout Scotland's waters, including the most important areas within the proposed Coastal and Marine National Park. Only with such Nationally Important Marine Areas designated through a Marine Act for Scotland could marine biodiversity protection zones within the proposed CMNP (and in wider Scottish seas) be given robust, fit-for-purpose statutory underpinning.

There is also no sectoral identification of what constitutes sustainable use, of eg fishing or aquaculture, so LINK members have concerns as to how the NPA could enforce the precautionary principle without any powers. Without adequate legislative teeth, members would have concerns that the limitations of coastal partnerships will simply be replicated, whereby they are impotent as soon as conflicts between commercial interests and conservation arise.

³ Appropriate powers would ensure a strong NPA with a lead role in planning and management, appropriate structures would include local advisory groups able to input to decisions on boundaries, NPP preparation etc, and statutory measures could, for example, give the NPA a specific function 'to encourage the active involvement of stakeholders'.

It is also worth emphasising that, should Marine Spatial Planning be forthcoming, as looks increasingly likely, any proposed CMNP will be entirely encompassed by a Marine Spatial Planning area at the regional sea scale⁴. As such, the NPA should input to and be a statutory consultee for the appropriate regional Marine Spatial Plan, since marine species, habitats and processes of course do not recognise administrative boundaries. The CMNP area itself will effectively become a local marine spatial plan, nested within a regional marine spatial plan.

Ministers seek consultees' views on whether the Park Authority should be given a last resort 'stop' power.

The NPA should be given powers to impose 'Stop orders'. However, these deal with problems once they have occurred and there is no mechanism for invoking the precautionary principle to prevent the damaging activity in the first place. It would be far more efficient, for sedentary species and habitats at least, to have important features protected as Nationally Important Marine Areas (NIMAs) in order to minimise the need for using 'stop orders'. LINK members recognise that for mobile species such as cetaceans and basking sharks that might come into the vicinity of a potentially damaging activity, 'stop orders' could prove useful in such circumstances.

In order for both 'Stop orders' and NIMAs to be effective, enforcement has to be effective. A National Park Authority therefore has to have sufficient resources in order to properly police the CMNP, ideally with as light a touch as possible.

How can Inshore Fisheries Groups work with the Park Authority?

LINK members have concerns that the NPA would have limited powers over fishing, relying instead on the strength of the Park Plan, which would be simply indicative. Although Inshore Fisheries Groups (IFG) are not statutory bodies, LINK members therefore recommend that IFG Management Plans, as overseen by the Scottish Executive, have to legally abide by the National Park Plan.

Do you agree with the proposed approach (option e) to managing aquaculture?

No, LINK members believe that Option (a) would be better, whereby the NPA assumes the planning function for aquaculture, along with other activities, as part of an integrated Marine Spatial Planning system for the CMNP, with the NPA the designated Marine Spatial Planning authority. Without robust statutory planning, the NPP would be in danger of being ignored. However, LINK members recognise that the NPA would not be the consenting authority for many of the activities over which it would have planning powers. For example, aquaculture discharge consents would still be provided by SEPA, although the planning authority for the development of a fish farm within the CMNP area would be the NPA.

Which approach do you prefer for the National Park Authority and why.

⁴ Defra (2004) Review of Marine Nature Conservation. Working Group report to Government

LINK would prefer Option three in Table One as we believe this would make the most effective model for the National Park Authority.

Comments are also invited on the option of a phased approach that provides for review at a later date.

Given the complex nature of the marine consenting and licensing system, and the raft of current developments including the UK Marine Bill and possible future Scottish Marine Bill, LINK members would agree that a phased approach with opportunity for review at a later date would be pragmatic and realistic.

Do you think the existing powers and functions provided in the Act are sufficient for a Coastal and Marine National Park Authority?

The Act has considerable flexibility to deliver integrated and responsive management within the CMNP, for example:

Ss.6,7 the Designation Order formalises the functions of the NPA, and there is flexibility within the Act to give the NPA any additional powers it requires to fulfil its aims collectively and in a co-ordinated way.

S.10 allows for the NPA to be given either full or partial planning powers or 'such functions in relation to planning as the order may specify'

S.18 allows for Scottish Ministers to delegate any of their functions relevant to the CMNP (except law-making), to the NPA.

S.20 allows for the creation of stakeholder Advisory Groups

S.31 allows for various clauses including Sch 3 (miscellaneous functions of the NPA) and Sch 5 (modification of enactments) to be amended by statutory instrument to suit the marine situation.

However, management of a port or harbour in Great Britain can be authorised under the extensive powers provided by the Harbours Act (1964). Harbours Act powers enable a harbour authority to carry out works, including channel dredging, and normally override the requirement for consents under the Coastal Protection Act (1949). Scottish Ministers have devolved responsibility for the exercise of Order making functions under the Harbours Act and Harbour Authorities have a range of rights regardless of the surrounding Local Authorities. Clarification is therefore required with respect to the relationship between the CMNP Authority and any Harbour Authority within or adjacent to the CMNP. At the very least, the NPA should be named as a statutory consultee for any area within or adjacent to the CMNP (such as a harbour identified under the Harbours Act) for which they don't have control.

Furthermore, legislation is currently lacking to deliver Nationally Important Marine Areas and Marine Spatial Planning throughout Scottish waters. As discussed above, LINK members

support a Marine Act for Scotland to deliver these legislative tools; however the power to designate NIMAs should rest with the Minister following scientific advice from the Statutory Nature Conservation Agencies.

Are the principles for establishing the Park Board the right ones for ensuring local and national views are taken into account, including the views of those using the area but who do not live there?

LINK members would agree with the basic pattern balancing local and national representation as set out in the consultation document.

Do you have any other views on the Board and governance of the National Park Authority?

LINK members would hope that the Board of a CMNP would be open, transparent and that appropriate weighting would be given to the opinions of Board members depending upon the amount of first-hand experience they had on whichever policies were being discussed.

Comments are invited on the running costs and financial implications of a Coastal and Marine National Park.

In order to effectively enforce the National Park Plan, the National Park Authority will of course need staff and resources such as offices, boats and other equipment. However, provided that adequate resources, powers and functions are in place to enable the NPA to properly 'conserve and enhance the natural and cultural heritage of the area' and properly manage the Park, the economic benefits (as outlined in response to the first question) flowing from the sustainable management of one outstanding area of Scotland's coast and sea will far outweigh whatever set-up costs and resources are necessary in order to ensure the best possible CMNP.

Concluding Remarks

LINK members welcome the proposed Coastal and Marine National Park provided the following are in place to deliver the best possible Park:

- A strong National Park Plan that is a clear route map for meeting the Park aims
- A strong National Park Authority with responsibility for access, full planning powers on land and a lead role in planning and co-ordinating activities at sea
- Measures to ensure that the natural and cultural heritage of the Park is conserved and enhanced
- A marine spatial planning system for the areas of sea within the Park
- An action plan for involving local and national interests in the management of the Park

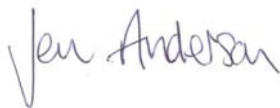
- Inshore Fisheries Groups Management Plans that must abide by the National Park Plan
- Tools to influence activities like shipping that are reserved to Westminster
- Independent review of how well the Park meets its aims

LINK members would also reiterate that, in order to deliver the benefits for all of Scotland's coasts and seas provided by a properly managed Coastal and Marine National Park for one successful area, a Marine Act for Scotland is urgently needed to deliver the following:

- A statutory system of Marine Spatial Planning in Scotland, fully integrated with other Marine Spatial Plans throughout the UK
- A lead Marine Management Organisation (MMO) to oversee marine spatial planning in Scottish waters, in co-ordination with a UK MMO, and measure success of Marine Spatial Plans against delivering an ecosystem approach through development and adoption of Marine Ecosystem Objectives
- Adequate protection for marine species, habitats and features of Scottish and international importance, including a network of Nationally Important Marine Areas

If you would like any further information please do not hesitate to contact Scottish Environment LINK. The following organisations support this consultation response:

Sincerely



Jen Anderson
Chief Officer

On behalf of the following LINK member organizations:

Council for Scottish Archaeology
Marine Conservation Society
The National Trust for Scotland
Mountaineering Council of Scotland
Ramblers' Association Scotland
Royal Society for the Protection of Birds Scotland
Scottish Wildlife Trust
Woodland Trust Scotland
WWF Scotland